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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

SERGIO BETANCOURT, on behalf of
himself and others similarly situated,

Case No.

Plaintiff,

VS

MERCEDES-BENZ USA, LLC,

Defendant.

CLASS ACTION

COMPLAINT FOR:

**VIOLATIONS OF BUSINESS AND
PROFESSIONS CODE SECTION 17200, *et
seq.***

VIOLATION OF CIVIL CODE SECTION 1750, *et seq.*

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1 Plaintiff Sergio Betancourt (“Plaintiff” or “Betancourt”), individually and on behalf of
 2 all other California citizens similarly situated, brings this action against Defendant Mercedes-
 3 Benz USA, LLC, (“Defendant” or “Mercedes-Benz”), upon information and belief, except as to
 4 his own actions, the investigation of his counsel, and the facts that are a matter of public record,
 5 and alleges as follows:

6 INTRODUCTION

7 1. This matter arises from Defendant Mercedes-Benz’s unlawful failure to tender a
 8 statutorily compliant California Emissions Warranty for the vehicles that Mercedes-Benz
 9 distributes in the State of California.

10 2. In 1990, the California Air Resource Board (“CARB”) submitted, and the
 11 Legislature adopted, California Code of Regulation §§ 2035, *et seq.*, which, requires all vehicle
 12 manufacturers to ensure that any new motor vehicle sold in California is accompanied by a
 13 “statutorily compliant” general emissions warranty. (“California Emissions Warranty”)

14 3. In order to be “statutorily compliant,” the emissions warranty must provide
 15 coverage for defects “which cause the failure of a warranted part [or] which would cause the
 16 vehicle’s on-board diagnostic (“OBD”) malfunction indicator light (“MIL”) to illuminate, for a
 17 period of three years or 50,000 miles, whichever occurs first[.]” [13 CCR § 2037(b)(2)].

18 4. A “warranted part” is defined as any part installed by a manufacturer “which
 19 affects any regulated emission from a motor vehicle or engine[.]” [13 CCR § 2035(c)(2)(B)].

20 5. When the part is considered to be a “high-priced” warranted part, the
 21 manufacturer must extend the emissions warranty from three years/50,000-miles, to 7-years or
 22 70,000-miles. [13 CCR § 2037(b)(3)].

23 6. In an effort by Mercedes-Benz to minimize its warranty exposure, Mercedes-
 24 Benz unilaterally and unlawfully limited the parts that are covered under Mercedes-Benz’s
 25 application of the California Emissions Warranty as covered by the high-priced emissions
 26 warranty, and when these parts are defective, instead of covering the parts and related repairs
 27 under the California 7-years 70,000-miles Emissions Warranty, Mercedes-Benz refuses to cover
 28 the parts under said California Emissions Warranty, harming its customers.

1 7. Relevant to this case are the engine pistons installed in vehicles distributed by
2 Mercedes-Benz in California under the Mercedes-Benz brand name (“Class Vehicles”). As set
3 forth herein, the engine pistons in Class Vehicles are high-priced, emissions related parts which
4 should have been covered for 7-years or 70,000-miles pursuant to the California Emissions
5 Warranty requirements.

6 8. As will be detailed further below, the California Air Resources Board has already
7 definitively stated that engine pistons installed in internal combustion engines are emissions
8 related parts. The total retail cost of the parts and labor to replace a engine piston installed in the
9 Class Vehicles is such that the engine pistons are high-priced and thus covered under the 7-years
10 or 70,000-miles California Emissions Warranty for high-priced emissions related parts.

11 9. Specifically, in June of 1990, the California Air Resources Board published an
12 emission-related parts list, which listed examples of components that were emission related
13 parts as defined in 13 California Code of Regulations Section 1900(b)(3). In the publication,
14 located in Section III Mechanical Components, Subsection B Combustion Chamber, the engine
15 piston was specifically identified as being an emission related part. Furthermore, any time a
16 engine piston installed in a Class Vehicle requires replacement, the retail cost of parts and labor
17 for the replacement will always exceed \$1,000.00, thus always exceeding the high-cost
18 threshold. Furthermore, when a engine piston installed in a Class Vehicle is defective, the defect
19 will cause the MIL to illuminate and will cause the Class Vehicle to fail a California smog
20 check. Thus, engine pistons installed in Class Vehicles are “warranted parts” covered under the
21 California emissions warranty.

22 10. As alleged in greater detail below, not only are the engine pistons installed in
23 Class Vehicles “warranted parts,” but they are “high-priced” warranted parts because the retail
24 cost of the parts and labor to replace engine pistons exceed the “high-priced” threshold. Thus,
25 repair or replacement is covered under the California Emissions Warranty for 7-years or 70,000-
26 miles.

27 11. Yet, in an effort to minimize its warranty costs, Mercedes-Benz has unilaterally,
28 wrongfully, and unlawfully excluded many parts, including but not limited to engine pistons,

from being covered under Mercedes-Benz's emissions warranty as "high-priced" warranted parts. On information and belief, Mercedes-Benz has never treated engine pistons as "high-priced" warranted parts. As a result, Class Members, including Plaintiff, have wrongfully been denied warranty coverage.

12. As a result of Mercedes-Benz's systematic refusal to provide the proper emissions warranty coverage, Mercedes-Benz wrongfully required Plaintiff, and thousands of other Class Members, to pay out-of-pocket for repairs which should have been conducted free of charge under the 7-years or 70,000-miles emissions warranty.

13. Further, as alleged below, by failing to cover the engine pistons under the California Emissions Warranty, Mercedes-Benz also failed to provide a fully compliant California Emissions Warranty for all Class Vehicles at the time of sale, resulting in Class members overpaying for their vehicles.

14. Plaintiff, on behalf of himself and all others similarly situated, seeks redress for Mercedes-Benz's violations of California law based on the causes of action set forth below. By this action, Plaintiff primarily seeks an order declaring that, *inter alia*, Mercedes-Benz's current and past practices with respect to the engine piston and/or other parts as described herein do not comply with the CCRs and with the California Emissions Warranty and an injunction to remedy NNA's misconduct directing Mercedes-Benz to, *inter alia*, provide warranty coverage for the repair and replacement of defective Class Vehicle engine pistons during the first 7-years or 70,000 miles of vehicle service. Ancillary to that relief, Plaintiff also seeks reimbursement for, *inter alia*, all out of pocket costs paid for repairs that should have been covered specifically for the engine piston under the 7-year 70,000-mile and California Emissions Warranty.

BACKGROUND

15. In order to understand the widespread effect of Mercedes-Benz's unlawful conduct, it is important to identify the statutory provisions at issue.

16. In September 1990, and pursuant to its broad authority to regulate and reduce vehicle emissions under Health and Safety Code §§ 43013(a) and 43205, CARB submitted, and the Legislature adopted, California Code of Regulations (“CCR”) §§ 2035, *et seq.*, otherwise

1 known as the “Emission Control System Warranty Requirements for 1990 and Subsequent
2 Model Year Passenger Cars, Light-Trucks, and Medium-Duty Vehicles.”

3 17. The Regulations require manufacturers to provide warranty coverage for defects
4 relating to “warranted parts.” As defined by the Regulations, a “warranted part” includes any
5 part whose malfunction is required to, or can, cause the vehicle’s MIL to illuminate—even
6 though the primary function of the defective component is not directly related to emissions
7 control. 13 CCR § 2035(c)(2)(B).

8 18. The MIL is a light located on the driver’s side instrument panel that, when
9 illuminated, is amber in color and displays either a “Check Engine/Powertrain” message; a
10 “Service Engine/Powertrain Soon” message; or the International Standards Organization’s
11 “engine symbol.”

12 19. The MIL illuminates to notify the driver of detected malfunctions in the vehicle’s
13 on-board diagnostic emission systems. In layman’s terms, this means that when the MIL is
14 illuminated, an emissions-related defect has been detected in the vehicle.

15 20. One type of “warranted part” is an emissions-related part. An “emissions-related
16 part” is defined in 13 CCR § 1900(b)(3) as any automotive part which affects any regulated
17 emission from a motor vehicle which is subject to California or federal emission standards. This
18 includes, at a minimum, those parts identified in the “Emissions-Related Parts List,” adopted by
19 CARB on November 4, 1977, as last amended June 1, 1990.

20 21. Any defect which “cause[s] the failure of a warranted part [or] which would
21 cause the vehicle’s on-board diagnostic malfunction indicator light to illuminate” is entitled, by
22 statute, to warranty coverage “for a period of 3-years or 50,000 miles, whichever occurs first[.]”
23 13 CCR § 2037(b)(2).

24 22. As will be further detailed below, the engine pistons installed in Class Vehicles
25 are “warranted parts” and “emissions-related parts” because their failure causes the MIL to
26 illuminate, and their failure increases regulated emissions.

27 23. As set forth above, repair or replacement of any emissions-related components
28 are generally covered by a California statutory 3-years or 50,000-miles emission warranty.

1 However, if these emissions-related parts are determined to be “high-priced,” then 13 CCR §
 2 2037(c)(3) requires that the warranty coverage be extended from 3-years or 50,000 miles, to 7-
 3 years or 70,000 miles.

4 24. A “high-priced warranted part” is defined as a warranted part whose individual
 5 replacement cost at the time of certification exceeds the cost limit established by the annual
 6 average nationwide urban Consumer Price Index (“CPI”) for the calendar year two years prior
 7 to the model-year for which the cost limit is being calculated. [13 CCR § 2037(c)(3)]. Thus, to
 8 determine the cost limit for a high-priced warranted part in 2018, the calculation would need to
 9 utilize the annual average nationwide urban CPI for 2016.

10 25. In calculating whether a particular part’s individual replacement cost at the time
 11 of certification exceeds the cost limit, “the replacement cost shall be the retail cost to a vehicle
 12 owner and include the cost of the part, labor, and standard diagnosis.” 13 CCR § 2037(c)(1).
 13 This calculation must utilize a price-point as would be charged “in the highest-cost metropolitan
 14 area of California.” 13 CCR § 2037(c)(2).

15 26. This cost limit shall be calculated using the following equation:

$$\text{Cost limit}_n = \$300 \times (\text{CPI}_{n-2} / 118.3)$$

16 27. Cost limit_n is the cost limit for the applicable model year of the vehicle rounded
 17 to the nearest ten dollars.

18 28. If, upon conducting this calculation, the price of replacement exceeds the CPI
 19 cost limit, the part is a “high-priced” warranted part, and the manufacturer is statutorily required
 20 to extend warranty coverage for the part’s repair or replacement from 3-years or 50,000 miles,
 21 to 7-years or 70,000 miles. 13 CCR § 2037(b)(3).

22 29. When using the methodology required by the California Code of Regulations to
 23 calculate the cost of engine piston replacement, the retail cost of parts and labor is extensive and
 24 is always *greater* than \$1,000.00. However, the high-price cost limit has *never exceeded* \$1,000.
 25 Thus, the cost of a engine piston replacement in a Class Vehicle always exceeds the cost limit,
 26 and the engine piston in Class Vehicles is a “high-priced” part.

27 30. Because the engine pistons in Class Vehicles are “high-priced” warranted parts

as defined by 13 CCR § 2037(c)(1), their repair or replacement should have been covered by Mercedes-Benz under the 7-years or 70,000 miles California Emissions Warranty.

Unfortunately, Mercedes-Benz does not extend 7-years or 70,000 miles California Emissions Warranty coverage for the engine pistons installed in the Class Vehicles.

31. While this action focuses on the engine piston specifically, Plaintiff also alleges that Mercedes-Benz has been using the wrong standard generally to determine if an emissions part, such as the engine piston, is a warranted part and is “emissions-related,” as detailed below. Mercedes-Benz also systemically has been using the wrong standard for calculating the retail labor cost in determining whether a part is a “high-priced part” under the California Code of Regulations. Instead of using the retail labor cost *i.e.*, the number of labor hours that the *customer pays* for the repair (“customer pay”), Mercedes-Benz uses, and has always used, the number of hours that the *manufacturer pays its dealers to perform the repairs under warranty* (“warranty pay”), which is a lesser amount. As a result, Mercedes-Benz is grossly understating the parts that are designated as high-priced warranted parts under the CCR, including the engine pistons.

JURISDICTION AND VENUE

32. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2)(A) because: (i) members of the Class are citizens of a state different from that of Mercedes-Benz; and (ii) aggregating the claims of individual Class members, the total matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs. Further, 28 U.S.C. § 1332(d)(5) does not apply because (i) Mercedes-Benz is not a state, state official, or other governmental entity against whom the Court may be foreclosed from ordering relief, and (ii) the number of members of the Class in the aggregate exceeds 100.

33. This Court has personal jurisdiction over Mercedes-Benz because Mercedes-Benz has sufficient minimum contacts with California, having intentionally availed itself of the California market so as to render the exercise of jurisdiction over it by this District Court, Eastern Division, consistent with traditional notions of fair play and substantial justice.

34. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Defendant is subject to the Court's personal jurisdiction with respect to the civil action in question. Further, a related action, *Hazdovac v. MBUSA*, Case No. 20-cv-00377-RS, is pending in this District and this Division.

PARTIES

35. Plaintiff Sergio Betancourt is, and at all times relevant hereto has been, an individual. At all times relevant, Plaintiff resided in San Bernardino County, California. The repairs that give rise to this action were made to Betancourt's vehicle in San Bernardino County, California.

36. Defendant Mercedes-Benz was and is, a Delaware corporation, headquartered in Sandy Springs, Georgia, doing business in the State of California. Mercedes-Benz sells Vehicles, including the Class Vehicles, in the State of California.

37. Plaintiff reserves the right to expand, limit, modify, or amend these allegations at any time, based upon, changing circumstances and/or new facts obtained during discovery.

SUBSTANTIVE ALLEGATIONS

38. Betancourt purchased and is the owner of a 2015 Mercedes-Benz C300, VIN 55SWF4JB9FU066099 (“Subject Vehicle”). The Subject Vehicle was purchased by Betancourt in the state of California and registered in the state of California.

39. On January 28, 2022, at 51,672 miles, the Subject Vehicle was presented for repairs to Mercedes-Benz of Ontario, located at 3787 East Guasti Road, Ontario, California 91761, because the Subject Vehicle was malfunctioning. Mercedes-Benz of Ontario is a Mercedes-Benz authorized repair facility. Mercedes-Benz of Ontario determined that the cylinder 1 engine piston was cracked, causing crankcase pressure to blow oil into the cylinder, resulting in white smoke coming out of the exhaust. Mercedes-Benz of Ontario provided Plaintiff with a quote which indicated that the parts and labor to replace the engine piston far exceeded \$1,000.00. Furthermore, Plaintiff was charged \$215.00 to diagnose what was wrong with the Subject Vehicle. Mercedes-Benz refused to cover the engine piston repair under the California Emissions Warranty, even though the defect related to a high-priced warranted part,

1 even though the Subject Vehicle had been in service for less than 7-years, and even though the
2 vehicle had been driven less than 70,000-miles. Betancourt paid the diagnostic fee out-of-
3 pocket, and was advised that he would have to pay for the engine piston replacement.
4 Betancourt paid the diagnostic fee, and did pay for the repairs, which cost several thousand
5 dollars. Thus, Betancourt suffered damage.

6 40. The entire cost of the diagnosis and repairs relating to the engine piston should
7 have been covered and paid for by Mercedes-Benz under the 7-year or 70,000-miles California
8 Emissions Warranty. This is because, pursuant to 13 CCR § 2037(c), the engine piston should
9 have been identified as a high-priced emissions-related part, and the parts relating to that repair
10 should have been covered under the California Emissions Warranty pursuant to regulation
11 2037(c).

12 41. Mercedes-Benz's failure to classify the engine pistons installed in the Class
13 Vehicles as covered parts under the California Emissions Warranty was an omission by
14 Mercedes-Benz designed to limit its warranty exposure.

15 42. Plaintiff's experience is just one of many examples of Mercedes-Benz's scheme
16 to avoid providing a true and comprehensive list of all parts which should be covered under
17 either a 3-year or 50,000 mile or 7-years or 70,000-miles California Emission Warranty.

18 43. The details of how Mercedes-Benz actually applied the CCR and the CCR cost
19 limit formula with respect to engine piston replacements in the Class Vehicles are exclusively
20 within Mercedes-Benz's possession—as is the information regarding what other parts
21 Mercedes-Benz improperly omitted from its list of parts entitled to coverage under the
22 California Emissions Warranty.

23 44. Plaintiff presented the Subject Vehicle to a Mercedes-Benz authorized repair
24 facility for repairs prior to the end of the 7-years or 70,000-miles California Emissions Warranty
25 period for high-priced emissions parts. Instead of conducting these repairs under warranty as
26 required by the regulations, Mercedes-Benz unlawfully denied warranty coverage for the engine
27 piston—a “high-priced” emission part which should have been covered under the 7-years or
28 70,000-miles California Emissions Warranty.

1 45. The reason that Plaintiff was charged for the repairs was not the result of an
2 individual oversight by Mercedes-Benz of Ontario in failing to identify the repairs as being
3 covered under the 7-years or 70,000-miles California Emissions Warranty. Instead, Plaintiff was
4 denied warranty coverage because Mercedes-Benz, in a systematic and organized attempt to
5 increase profit, deceptively omitted from warranty booklets and internal dealership literature,
6 parts which should have been identified as “emissions-related”, “warranted parts” and as “high-
7 priced” warranted parts entitled to extended statutory coverage.

8 46. Pursuant to 13 CCR § 2037(c)(1)(B), Mercedes-Benz is required to identify
9 “high-priced warranted parts...which have an individual replacement cost at the time of
10 certification exceeding the cost limit defined in section (c)(3).”

11 47. Mercedes-Benz intentionally failed to identify all these components in order to
12 increase profit vis-à-vis reducing the amount of money it spends on warranty-related repairs.

13 48. If Mercedes-Benz complied with California law and properly identified all the
14 parts which should have been identified as “high priced,” then Mercedes-Benz dealerships
15 would properly provide warranty coverage for high-priced warranted parts, and Plaintiff would
16 never have paid out-of-pocket for repairs which were covered under warranty.

17 49. In addition, Mercedes-Benz’s failure to provide a comprehensive California
18 Emissions Warranty that covered the engine pistons resulted in Plaintiff and the Class
19 overpaying for their vehicles. In essence, Class Members paid for vehicles that purported to
20 cover all required parts, including the engine pistons, pursuant to the California Emissions
21 Warranty, but did not. Mercedes-Benz’s refusal to include in its written warranty booklets
22 coverage for the engine pistons in Class Vehicles under the California Emissions Warranty
23 resulted in Mercedes-Benz’s unjust enrichment and detriment to Plaintiff and the Class. This is
24 because Class Members were supposed to be provided with warranty coverage which complied
25 with Mercedes-Benz’s California Emissions Warranty obligations. A compliant warranty has a
26 value to Class Members and has a cost to Mercedes-Benz. Instead of Mercedes-Benz providing
27 a compliant warranty, Mercedes-Benz has provided a deficient warranty which does not cover
28 the engine pistons under the California Emissions Warranty, which Mercedes-Benz is lawfully

1 obligated to cover. The non-compliant warranty provides less coverage and thus exposes Class
2 Members to more financial risk and is less valuable to Class Members. Similarly, the non-
3 compliant warranty costs Mercedes-Benz less money, because it exposes Mercedes-Benz to less
4 risk and will result in Mercedes-Benz paying out less in warranty claims.

5 50. Class Members were entitled to a compliant California Emissions Warranty but
6 were provided with a deficient warranty. As a result, Mercedes-Benz has been unjustly enriched
7 by providing a deficient warranty which reduced Mercedes-Benz's costs, and Class Members
8 have been damaged by not receiving the warranty that they were legally entitled to receive.

9 51. In fact, irrespective of whether a Class Member's Class Vehicle underwent a
10 repair to a engine piston defect, Class Members were sold cars which were worth less than what
11 Class Members actually paid for, by virtue of Mercedes-Benz's systematic failure to provide a
12 warranty that covered the engine pistons under the California Emissions Warranty.

13 52. Mercedes-Benz's conduct violates the Unfair Competition Law, California
14 Business and Professions Code section 17200, et seq. (the "UCL") as well as the Consumer
15 Legal Remedies Act, California Civil Code Section 1750, et seq., (the "CLRA").

16 53. Plaintiff and other members of the Class have suffered damage as a result of
17 Mercedes-Benz's wrongful conduct as alleged herein and therefore have standing.

18 54. Plaintiff's harm is continuing. As described herein, MBUSA is systemically
19 continuing to fail to properly identify all parts that should properly and correctly be covered
20 under the California Emissions Warranty as emissions-related parts and/or high-priced parts.
21 These parts include the parts identified in the "OBD2 Summaries" (also referred to as "OBDII
22 Summaries"), parts identified under "Appendix B" (as described below) and parts that increase
23 regulated emissions that are not currently covered under MBUSA's California Emissions
24 Warranty.

25 55. Plaintiff would purchase another Mercedes vehicle. Due to MBUSA's
26 continuing conduct, however, he is unable to rely on MBUSA to properly identify all parts that
27 should properly be covered under the California Emissions Warranty and thus Plaintiff will have
28 no way of knowing whether MBUSA, in fact, is complying with the California Emissions

1 Warranty as required. Further, absent injunctive relief, Plaintiff will not know whether it makes
 2 sense to spend his money on a new Mercedes vehicle on account of MBUSA's non-compliance
 3 with the California Emissions Warranty and he will have to deal with the same sort of warranty
 4 coverage issues again, and, if he does purchase another Mercedes vehicle, Plaintiff might
 5 reasonably, but incorrectly assume that MBUSA complied with all the requirements of the
 6 California Emissions Warranty, when it did not. To the extent that Plaintiff does not purchase
 7 another Mercedes vehicle, it will be because, at least in part, he is unable to rely on MBUSA to
 8 comply with the requirements of the California Emissions Warranty.

9 **CARB DECLARATON**

10 56. CARB has provided a Declaration from Allen Lyons, who, at the time the
 11 Declaration was made, was the Chief of the Emissions Certification and Compliance Division of
 12 CARB regarding the California Emissions Warranty. The Declaration (hereinafter, the "CARB
 13 Declaration") was made "for the sole purpose of educating the Courts about CARB's
 14 interpretation and implementation of California's warranty requirements." The CARB
 15 Declaration sets forth CARB's interpretation of certain of the foregoing CCR provisions,
 16 including how to define a "warranted part" and a "high-priced" warranted part for purposes of
 17 the California Emissions Warranty.

18 57. The CARB Declaration states, in relevant part, that "warranted parts" under the
 19 California Emissions Warranty "include any components that can or are required to illuminate
 20 the OBD Malfunction Indicator Light (MIL) in the event of a malfunction, even if the primary
 21 function of the component is not emission control, within the warranty period. (Cal. Code Regs.,
 22 tit. 13, § 2037, subd. (b)(2).) The MIL is a light located on the driver's side instrument panel
 23 that, when illuminated, is amber in color and displays "Check Engine/Powertrain," "Service
 24 Engine/Powertrain Soon," or the International Standards Organization (ISO) engine symbol; the
 25 MIL illuminates to notify the driver of detected malfunctions of OBD-monitored emissions
 26 systems on the vehicle. (Cal. Code Regs., tit. 13, § 1968.2, subds. (a), (d)(2.1.1) & (2.2.).)"

27 58. The CARB Declaration also clarifies the standard for determining whether a
 28 warranted part is emissions-related. According to CARB, as set forth above, any vehicle part

1 that causes the MIL to illuminate and/or affects regulated emissions is an emissions-related part
2 under the California Emissions Warranty law. This is not the standard that Mercedes-Benz has
3 been using.

4 59. The CARB Declaration further provides that “When calculating the cost of labor
5 portion of the replacement cost equation, in order to determine if a part is a “high-priced”
6 warranted part for the purposes of California Code of Regulations, title 13, section 2037,
7 subdivision (c), manufacturers first calculate the amount of time it would take to diagnose and
8 repair or replace the part (the labor hours). A dollar amount is then attributed to the number of
9 labor hours to come up with a cost of labor for each part. In doing this, manufacturers should
10 use the labor hours and associated costs that would be charged to consumers to perform any
11 required diagnosis and repairs to or replacement of the part, not the labor hours that
12 manufacturers’ service dealerships are allowed to charge manufacturers.”

13 60. Thus, based on the CARB Declaration, Mercedes-Benz is required to provide 7-
14 years or 70,000-miles warranty coverage for all components whose failure affects any regulated
15 emission and can or are required to illuminate the MIL, even if the primary function of the
16 component is not emissions control, and which are considered high-priced based on the amount
17 a consumer would pay for the parts and labor associated with a defective component’s diagnosis
18 and replacement.

19 61. Although the engine pistons installed in Class Vehicles affects regulated
20 emissions and is considered a high-priced emissions related part, as further set forth below,
21 Mercedes-Benz, as a matter of custom and practice, has failed to cover engine pistons installed
22 in Class Vehicles for 7-years or 70,000-miles as required by the CCR.

23 62. Further, as set forth above, MBUSA has an obligation to provide 7-year/70,000-
24 mile coverage under the California Emissions Warranty for all “high-priced” emissions-related
25 components. MBUSA is supposed to determine if a component is high-priced by analyzing the
26 cost to the consumer to diagnose and repair the component, including what the consumer would
27 pay for parts and labor.

1 63. As part of the certification process for a vehicle, the manufacturer determines
 2 which parts it considers to be “emissions parts” and submits a list of those parts to CARB.
 3 Section 2037(c). At the same time, the manufacturer also identifies the parts from the emissions
 4 parts list that the manufacturer has determined, based on the cost calculation set forth in the
 5 CCR, exceeds the cost limit and therefore are “high-priced” parts entitled to extended 7-
 6 year/70,000-mile coverage.

7 64. California Code of Regulations Section 2037(c)(1) states, in relevant part, that in
 8 calculating whether an individual replacement cost at the time of certification exceeds the cost
 9 limit, “the replacement cost shall be the retail cost to a vehicle owner and include the cost of the
 10 part, labor, and standard diagnosis.” Emphasis added. Similarly, Section 2037(c)(2) states that
 11 “the replacement cost shall be the retail cost to a vehicle owner and include the cost of the part,
 12 labor, and standard diagnosis.” Emphasis added.

13 65. As the CARB Declaration confirms, when calculating the retail cost of labor
 14 portion of the replacement cost equation, in order to determine if a part is a “high-priced”
 15 warranted part for the purposes of complying with the California Code of Regulations,
 16 “manufacturers should use the labor hours and associated costs that would be charged to
 17 consumers to perform any required diagnosis and repairs to or replacement of the part, not the
 18 labor hours that manufacturers’ service dealerships are allowed to charge manufacturers.” This
 19 is also consistent with the language in the CCRs which states that the “the replacement cost
 20 shall be the retail cost to a vehicle owner and include the cost of the part, labor, and standard
 21 diagnosis.”

22 66. However, MBUSA does not use, and has never used, the retail labor cost i.e., the
 23 number of labor hours that the customer pays for the repair (“customer pay”). Instead, MBUSA
 24 incorrectly uses the number of hours that the manufacturer pays its dealers to perform the
 25 repairs under warranty (“warranty pay”). MBUSA is using the wrong standard and, in so doing,
 26 is failing to the comply with the express terms of the CCR.

27 ///
 28 ///

1 A PISTON'S FUNCTION AND IMPACT ON EMISSIONS

2 67. A piston as used inside an internal combustion gasoline engine is a lubricated
3 sliding shaft that fits tightly inside a cylinder. The cylinder is also referred to as a combustion
4 chamber. The piston's purpose is to compress a gasoline-air mixture, then when the compressed
5 gasoline-air mixture is compressed, it is ignited by a spark generated from a spark plug, creating
6 a small explosion. When the small explosion occurs, the piston's purpose is to transfer the force
7 generated by the small explosion into energy. The transfer of energy occurs because downward
8 pressure is placed on the piston from the explosion. The piston is connected by a connecting rod
9 to a crankshaft. When the small explosion occurs, the piston is forced in a downward motion,
10 turning the crankshaft in a spinning motion. The spinning motion is ultimately transferred
11 through the transmission, driveshaft and axles, to the wheels of a vehicle, causing forward and
12 reverse vehicle motion. Modern internal combustion vehicle engines usually have between 4
13 and 8 pistons, depending on engine and vehicle size. All of the engine's pistons work in
14 harmony with each other and are connected to the crankshaft.

15 68. In order for the piston to be able to compress the gasoline-air mixture, the piston
16 and combustion chamber must create a sealed environment, so that when the piston slides up, no
17 gasoline or air leaks outside of the combustion chamber, causing the gasoline and air to
18 compress. If any gasoline or air leak outside of the combustion chamber, the gasoline and air
19 that leak out are wasted and not transferred into energy to drive the vehicle. This results in an
20 increase in regulated emissions. Furthermore, because the gasoline and air that does ignite inside
21 the combustion chamber is not the intended quantity of gasoline and air, and because the pounds
22 per square inch of compression is not as intended, the small explosion that is generated is not as
23 powerful as it would otherwise be, again increasing regulated emissions. Finally, the
24 aforementioned leaking that occurs if the piston and combustion chamber are not a sealed
25 environment may also
26 cause engine misfire, which increases regulated emissions.

27 69. Similarly, if the piston and combustion chamber do not create a sealed
28 environment, when the gasoline and air ignite, creating the small explosion inside the

1 combustion chamber, some of the pressure generated by the small explosion leaks. The leaked
 2 pressure reduces the amount of force being applied to the piston. This reduces the velocity of the
 3 piston's downward motion, wasting the power that is generated, and increasing regulated
 4 emissions.

5 70. When a piston has a crack, hole, or structural defect ("Piston Defect"), the Piston
 6 Defect will typically result in the combustion chamber no longer being a sealed environment,
 7 resulting in an increase in regulated emissions. As a result, the automotive industry as well as
 8 CARB regard pistons as emissions-related parts.

9 71. In June of 1990, CARB published an emission-related parts list, which listed
 10 examples of components that were emission related parts as defined in 13 California Code of
 11 Regulations Section 1900(b)(3). In the publication, located in Section III Mechanical
 12 Components, Subsection B Combustion Chamber, the engine piston was specifically identified
 13 as being an emission related part.

14 72. Furthermore, the engine pistons installed in Class Vehicles are "warranted parts"
 15 and "emissions-related parts" because their failure triggers an OBD fault code and causes the
 16 MIL to illuminate, and their failure increases regulated emissions, as stated herein. On
 17 information and belief, the Piston Defect triggered (or should have triggered, if the Subject
 18 Vehicle's onboard diagnostic system was functioning properly), fault codes P0301 and/or
 19 P0302, further confirming that the Piston Defect affects regulated emissions and causes the MIL
 20 to illuminate, as alleged herein and should be covered under the California Emissions Warranty.

21 73. Further, on information and belief, MBUSA's own documents, including
 22 specifically the OBD2 Summaries discussed below submitted to CARB as part of the vehicle
 23 certification process, identify the specific fault codes that directly correlate with increased
 24 emissions and confirm an emissionsrelated defect. Also, as confirmed by the OBD2 Summaries,
 25 these fault codes cause the OBDII MIL to be illuminated. The fault codes identified in the
 26 OBD2 Summaries confirm that there is a defect relating to an emissions related part.

27 74. As referred to above, the Class Vehicles are equipped with an OBDII onboard
 28 diagnostic system. The system uses sensors to gather data which is evaluated using OBDII fault

1 code logic. If the OBDII logic determines that the data is outside of an acceptable range, a fault
2 code is triggered, identifying a defect which increases regulated emissions. When MBUSA
3 seeks certification of vehicles for distribution in California, MBUSA is required, pursuant to 13
4 CCR 1968.2, to provide CARB with all of MBUSA's OBDII fault codes and the corresponding
5 logic. On information and belief, the fault codes for MBUSA vehicles are identified in a
6 MBUSA document entitled "OBD2 Summary Tables." MBUSA submitted OBD2 Summary
7 Tables or similar documents to CARB for every Class Vehicle and for every model year that the
8 vehicles were certified for sale in California.

9 75. The "OBD2 Summary Tables" identify the Components/Systems monitored by
10 OBDII, the acceptable ranges relating to the data gathered, the corresponding emissions fault
11 codes and that the MIL will be triggered when a defect is identified. The purpose of the OBDII
12 system, as confirmed in the CCR, is specifically to monitor emissions-related components. This
13 is why MBUSA is required to develop a compliant OBDII system which identifies emissions
14 related defects, triggering a fault code and a MIL. The fault codes are used to assist technicians
15 in repairing the vehicles, whereas the MIL is used to alert the driver of a defect. This means that
16 every defect that triggers the emissions fault codes identified by MBUSA in the
17 "OBD2Summary Tables" and the MIL is, by definition, an emissions-related defect. The OBD2
18 Summaries, among other documents, identify the parts that have not already been identified as
19 emissions parts by MBUSA in its warranty books but which, when defective, can or do trigger
20 an emissions fault code and result in illumination of the MIL. Therefore, in addition to the parts
21 identified on Appendix B described above, MBUSA is required to cover under the California
22 Emissions Warranty any defect that triggers a fault code identified by MBUSA in its OBD2
23 Summaries submitted to CARB or that should properly be identified on the OBD2 Summaries
24 because such a defect affects regulated emissions. This includes the Piston Defect.

25 76. The foregoing analysis addresses and precludes any potential "slippery slope"
26 argument or concern that every vehicle part could potentially be "emissions-related." CARB has
27 specifically stated that engine pistons are "emission-related." Thus, engine pistons are required
28 to be covered under the California emissions warranty.

77. Further, this litigation is not dependent on the assertion that “Emissions-related parts” are defined as every part in the OBDII system. Rather, this litigation asserts that there should be California Emissions Warranty coverage, at the very least, for the parts, components or systems identified on Appendix B and those parts whose defects trigger fault codes identified on the OBD2 Summary Tables and cause the MIL to be illuminated as set forth in the OBD2 Summaries. This is because said parts undeniably are “emissions-related” and fail in a manner that increases regulated emissions. MBUSA knows which fault codes these are because MBUSA is required to provide to CARB all the fault codes that trigger a MIL and the specific emissions-related conditions that trigger the fault codes as set forth in the OBD2 Summaries. Further, as confirmed in the CARB Declaration, emissions-related parts include any components that “can” or are required to illuminate the MIL in the event of a malfunction, even if the primary function of the component is not emissions control.

78. Accordingly, to address emissions-related coverage issues with respect to all emissions-related fault codes in the Class Vehicles at issue in this action and as currently identified by MBUSA in the OBD2 Summaries that MBUSA provided to CARB, MBUSA is required to cover, under the California Emissions Warranty, any defects that trigger a fault code identified by MBUSA in the OBD2 Summary Tables for each Class Vehicle.

79. MBUSA is well aware of what component failures cause a MIL to illuminate and cause an increase in regulated emissions. MBUSA's conduct in this case underscores its failure to comply with the Regulations. Yet, MBUSA fails to provide Emissions Warranty coverage for this component, which is also illustrative of MBUSA's systemic failure to provide coverage for numerous other components in the entire line of vehicles distributed by MBUSA.

ENGINE PISTONS ARE HIGH-PRICED WARRANTED PARTS

80. As part of the certification process for a vehicle, the manufacturer determines which parts it considers to be “emissions parts” and submits a list of those parts to CARB. Section 2037(c). At the same time, the manufacturer also identifies the parts from the emissions parts list that the manufacturer has determined, based on the cost calculation set forth in the CCR, exceeds the cost limit and therefore are “high-priced” parts entitled to extended 7-

1 year/70,000-mile coverage.

2 81. California Code of Regulations Section 2037(c)(1) states that in calculating
3 whether an individual replacement cost at the time of certification exceeds the cost limit, “the
4 replacement cost shall be the retail cost to a vehicle owner and include the cost of the part,
5 labor, and standard diagnosis.” Similarly, Section 2037(c)(2) states that “the replacement cost
6 shall be the retail cost to a vehicle owner and include the cost of the part, labor, and standard
7 diagnosis.”

8 82. When using the methodology required by the California Code of Regulations to
9 calculate the cost of engine piston replacement, the retail cost of parts and labor is extensive and
10 is always *greater* than \$1,000.00. However, the high-price cost limit as calculated by CARB and
11 disclosed every year by CARB has *never exceeded* \$1,000. Thus, the cost of a engine piston
12 replacement in a Class Vehicle always exceeds the cost limit, and the engine piston in Class
13 Vehicles is a “high-priced” part.

14 83. Specifically, with regard to the Subject Vehicle, according to Alldata Repair, a
15 subscription-based repository of information regarding automotive repair costs, the consumer
16 labor cost to replace one piston is no less than 27.3 hours of labor. Even using an hourly rate of
17 \$100.00 per hour, which understates the hourly rate paid by consumers in 2015, the labor cost
18 alone to replace one piston exceeds \$2,700.00. Thus, with regard to all Class Vehicles, the
19 piston is a high-priced part.

20 84. Because the engine pistons in Class Vehicles are “high-priced” warranted parts
21 as defined by 13 CCR § 2037(c)(1), their repair or replacement should have been covered by
22 Mercedes-Benz under the 7-years or 70,000 miles California Emissions Warranty.
23 Unfortunately, Mercedes-Benz does not extend 7-years or 70,000 miles California Emissions
24 Warranty coverage for the engine pistons installed in the Class Vehicles.

25 85. With regard to Plaintiff’s vehicle, On January 28, 2022, at 51,672 miles, the
26 Subject Vehicle was presented for repairs to Mercedes-Benz of Ontario. Mercedes-Benz of
27 Ontario determined that the cylinder 1 engine piston was cracked, causing crankcase pressure to
28 blow oil into the cylinder, resulting in white smoke coming out of the exhaust. Mercedes-Benz

1 of Ontario provided Plaintiff with a quote which indicated that the parts and labor to replace the
2 engine piston far exceeded \$1,000.00.

3 86. Since the cost to replace engine piston 1 was above the high-priced cost limit,
4 and because the engine piston is an emissions related part as set forth herein, the engine piston is
5 a high-priced warranted part which should have been covered for 7-years or 70,000-miles
6 pursuant to the California Emissions Warranty.

7 87. Furthermore, the cost to replace the engine piston for all model year Class
8 Vehicles is above the high-priced warranted part threshold in the model years they were
9 produced.

10 88. Thus, by failing to provide a 7-years or 70,000-miles warranty for the engine
11 piston in Class Vehicles, Mercedes-Benz violated the UCL and the CLRA.

12 89. As alleged herein, MBUSA performs a high-price analysis as part of the
13 certification process but has performed it incorrectly using the wrong standard and has not
14 performed the analysis for all properly identified emissions-related parts. Therefore, the next
15 required process is to calculate the replacement cost of each part identified on a corrected list of
16 emissions-related parts using the customer pay rate. This could be done as follows: (1) Identify
17 the standard labor time charged to consumers to diagnose if the part is defective. The time
18 charged to consumers for standard diagnosis will be determined using the two leading data
19 aggregators in the automotive industry, Mitchell and Alldata. It is an automotive industry
20 standard for repair facilities to use these data aggregators as guides to determine the appropriate
21 time to charge consumers for a standard diagnosis. The information provided by Mitchell and
22 Alldata provides vehicle specific and defect specific diagnostic protocols and accurately
23 estimated diagnostic labor time for evaluating virtually all symptoms and defects; (2) identify
24 the standard labor time paid by consumers to repair and/or replace a defective part. Mitchell and
25 Alldata also provide this information with the same degree of accuracy and reliability; (3) add
26 the standard diagnosis and repair time to arrive at the total time, then multiply the total time by
27 the respective labor rate identified MBUSA for each year, to arrive at the total labor charge. The
28 information that has been provided by MBUSA regarding the labor rate applicable to each year

1 appears to be accurate; (4) add the retail cost of the part, as identified by MBUSA, along with
2 all incidental supplies that are needed to complete the repair, such as coolant, etc.; and (5) the
3 sum of the aforementioned is the total cost to repair. This process will result in determining the
4 total cost of the repair. If the total cost for the repair exceeds the price threshold for the
5 respective year, the part shall be covered for 7 years or 70,000 miles.

6 90. All of the information and data needed to conduct this two-part audit and review
7 process are readily available. The results of this process are not subjective in nature but are
8 merely the mathematical and scientific certainties that derive from complying with the
9 California Emissions Warranty laws. The reason this lawsuit exists is not that there is confusion,
10 mathematical complexity, or ambiguity regarding MBUSA's obligations. The reason that this
11 lawsuit exists is simply because MBUSA has failed to follow the very simple, thoroughly
12 explained, and easily implemented instructions provided by the CCR. As a result, consumers are
13 being harmed in a very ascertainable, common and predictable manner.

14 91. The aforementioned analysis has already been commenced by Plaintiff's counsel
15 and has confirmed that there is a pervasive failure on the part of MBUSA to provide proper
16 warranty coverage and that this failure is not isolated to the C300 MBUSA vehicles.

17 92. The foregoing is just one example of implementing the second step of the
18 protocol to identify MBUSA's wrongful conduct with respect to identifying high-priced
19 warranted parts for vehicles that are not C300 MBUSA vehicles. The related *Hazdovac* action
20 identifies other parts. Plaintiff's review of the applicable data and standards also has determined
21 that the fuel injectors installed in the 2015 MBUSA SL65AMG are also high-priced emissions
22 parts. The warranty book for this vehicle identifies the part as covered under the California
23 Emissions Warranty, but not as being high-priced. Alldata has identified the customer pay rate
24 for the labor time to remove and replace the part. This labor time is multiplied by the labor rate
25 that MBUSA has already submitted to CARB. Alldata indicates that, while the part cost of one
26 injector is less than \$100.00, the customer pay labor time to remove and replace the part is 5.5
27 hours. MBUSA documentation submitted to CARB as part of the certification process for the
28 2015 MBUSA SL65AMG has identified the labor rate for 2015 as \$179.20 per hour. As a result,

1 the retail labor cost alone, when properly calculated, is over \$900.00 (\$179.20 x 5.5 = \$985.60).
 2 This amount well exceeds the \$590.00 threshold for the cost to diagnose and replace emissions
 3 related parts as set forth in MAC (which advises manufacturers of the cost threshold for model
 4 year 2015 vehicles, as alleged above). Thus, MBUSA has wrongfully failed to designate this
 5 part as high-priced, thus depriving consumers of the 7-year/70,000-mile warranty. This part
 6 would now be properly identified as a high-priced part entitled to the extended 7-year/70,000-
 7 mile warranty.

8 CLASS ACTION ALLEGATIONS

9 93. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

10 94. Plaintiff brings this action on his own behalf, as well as on behalf of all Class
 11 members similarly situated, pursuant to Federal Rules of Civil Procedure Rules 23(a), (b)(1), (2)
 12 and/or (3) and/or (c)(4).

13 95. Plaintiff reserves the right to redefine the Class and Subclasses and to add
 14 subclasses as appropriate based on further investigation, discovery, and specific theories of
 15 liability.

16 96. Mercedes-Benz's California Emission Warranty applies to vehicles purchased
 17 and registered in States which, in the year the vehicle was distributed, had adopted the
 18 California Emissions Warranty, i.e., "Reg. 177 States" or "Section 177 States".

19 97. Defendant's emissions warranty representations arise out of California law that
 20 Defendant must apply outside of California to the vehicles in the States listed. Accordingly,
 21 Defendant's conduct was specifically intended to have effects outside of California and was
 22 specifically intended to apply to vehicles and members of the Classes in those States that
 23 Defendant chose to include by the express terms of the California Emissions Warranty.

24 98. Under these unique circumstances, California has a specific interest in regulating
 25 conduct outside of California that specifically invokes California emissions requirements and
 26 California emissions regulations and has an interest in preventing illegal practices that involve
 27 breach of California Emissions Warranty law that Defendant has chosen to invoke outside of
 28 California in the States covered by the Reg. 177 Class and Subclass. As Defendant seeks to

1 apply the California Emission System Warranty to members of the Classes and vehicles in the
2 listed States outside of California, members of the Classes in those States likewise should be
3 included in a claim that seeks to vindicate their rights under that same warranty in California
4 and should have the ability to have their rights under that warranty asserted in California and
5 pursuant to California law.

6 99. Mercedes-Benz's own express application of the California Emissions Warranty
7 constitutes a sufficient connection between California and out-of-state potential Class members.
8 Further, Mercedes-Benz's misconduct, namely, Mercedes-Benz's failure to identify all
9 emissions-related, high-priced warranted parts to CARB, a California regulator, occurred in
10 California, and even out-of-state purchasers were harmed by Mercedes-Benz's conduct that
11 occurred in California. Mercedes-Benz failed to disclose, in its submissions to CARB, the parts
12 that are properly covered by the California Emissions Warranty, including, but not limited to,
13 engine pistons.

14 100. Mercedes-Benz is solely responsible for selecting and identifying to CARB all of
15 the parts that should be classified as "high-priced" emissions warranted parts, and high-priced
16 warranted parts, and Mercedes-Benz failed to include the engine piston and other components.
17 Californians and out-of-state potential Class members in the additional States covered by the
18 California Emissions Warranty suffered an identical harm – they were forced to pay the costs of
19 engine piston defect diagnosis, repair, or replacement, which should have been covered under
20 the California Emissions Warranty, and were provided with warranties which were less valuable
21 than the warranties they were legally entitled to at the time they purchased or leased their Class
22 Vehicle. Under these unique circumstances, California has the greater interest in applying
23 California's consumer laws to enforce compliance with the California Emissions Warranty than
24 the other States have in using their consumer laws to enforce the same Regulation. California
25 has a specific interest in regulating conduct outside of California that invoke California
26 emissions requirements and regulations, and California has an interest in preventing illegal
27 practices that involve breach of California emissions law that Defendant has chosen to invoke
28 outside of California in the specific States covered. California also has a supreme interest in

1 applying its own consumer protection laws in ensuring that the California Emissions Warranty
2 is properly interpreted and applied wherever Mercedes-Benz has chosen to invoke it.

3 101. Under the facts of this case, the law of California should be applied because
4 California's interest would be impaired if its consumer laws to enforce the California Emissions
5 Warranty were subordinated to consumer laws of the other States. Other jurisdictions' interests
6 in applying their own consumer protection laws to their own residents do not strongly outweigh
7 the interest California has in applying its consumer protection laws to enforce the California
8 Emission Warranty with respect to the specific potential out-of-state members of the Classes
9 identified herein. Therefore, the Classes alleged herein include persons who purchased or leased
10 Class Vehicles that are registered in States other than California.

11 102. There is sufficient similarity among all the Class Vehicles and Mercedes-Benz's
12 conduct as defined herein in that, among other things, all of the vehicles in the proposed Classes
13 are subject to the same California Emissions Warranty and the same requirements that
14 Mercedes-Benz report all emissions-related defects to CARB pursuant to the CCR. Mercedes-
15 Benz has acted in a uniform manner with respect to all Class Vehicles by failing to properly
16 cover engine pistons in the Class Vehicles as required under the California Emissions Warranty
17 and as described herein.

18 103. Accordingly, Plaintiff's proposed Class and Subclasses consist of and are defined
19 as follows:

20 California Class and Subclass:

21 All persons in the State of California who have been owners or
22 lessees of Class Vehicles and whose engine pistons are not covered
23 for 7-years or 70,000-miles (the "California Class").

24 All persons in the State of California who have been owners or
25 lessees of Class Vehicles and who have paid for repairs and parts
26 pertaining to defective engine pistons which occurred outside of the
Class Vehicle's new car warranty period but prior to 7-years or
70,000-miles (the "California Out-of-Pocket Subclass").

27 Reg. 177 Class and Subclass:

28 All persons who have been owners or lessees of Class Vehicles in

1 a State which, in the year their vehicle was distributed, had adopted
 2 the California Emissions Warranty (i.e., “Reg. 177 States” or
 3 “Section 177 States) and whose engine pistons are not covered for
 4 7-years or 70,000-miles (the “Reg. 177 Class”).
 5

6 All persons who have been owners or lessees of Class Vehicles in
 7 a State which, in the year their vehicle was distributed, had adopted
 8 the California Emissions Warranty (i.e., “Reg. 177 States” or
 9 “Section 177 States) and who have paid for repairs and parts
 10 pertaining to defective engine pistons which occurred outside of the
 11 Class Vehicle’s new car warranty period but prior to 7-years or
 12 70,000-miles (the “Reg. 177 Out-of-Pocket Subclass”).
 13

14 Excluded from the Classes and Subclasses are Defendant, and its
 15 subsidiaries and affiliates; its current and former officers, directors,
 16 and employees (and members of their immediate families); and the
 17 legal representatives, heirs, successors or assigns of any of the
 18 foregoing. Also excluded are any judge, justice, or judicial officer
 19 presiding over this matter and the members of their immediate
 20 families and judicial staff.
 21

22 104. Plaintiff’s primary goal on behalf of the Classes is to obtain injunctive relief
 23 requiring MBUSA to comply with the California Emissions Warranty and declaratory relief
 24 with respect to the proper interpretation of the California Emissions Warranty and MBUSA’s
 25 obligations pursuant to the CCRs and the California Emissions Warranty. Plaintiff’s claim for
 26 monetary relief is secondary to her claim for injunctive or declaratory relief. Even in the
 27 absence of possible monetary recovery, Plaintiff would bring this action to obtain the injunctive
 28 and declaratory relief sought. Any monetary relief that would flow to the members of the
 29 Classes would be ancillary to the injunctive or declaratory relief obtained.
 30

31 105. On behalf of the members of the Classes, Plaintiff seeks declaratory
 32 judgment/relief pursuant to 28 U.S.C. section 2201 et seq as to, *inter alia*, (1) that the engine
 33 piston in the Class Vehicles is an ‘emissions-related part’ and high-priced’ warranty part; (2)
 34 that MBUSA has used, and continues to use, the wrong or incorrect standards for identifying
 35 “emission-related” parts and “high-priced warranty parts” under the California Emissions
 36 Warranty; (3) that MBUSA failed and is failing to properly identify and warrant under the
 37 California Emissions Warranty all of the parts, components or systems in addition to the engine
 38 piston, that should have been properly covered for emissions-related defects as identified, *inter*
 39

1 *alia*, per the fault codes on the Class Vehicles OBD2 Summaries described herein, per
2 Appendix B to the CARB regulations and/or as high-priced warranty parts; and/or, (4) that
3 Plaintiff and members of the Classes are entitled to warranty coverage under California
4 Emissions Warranty for all Mercedes vehicle parts not properly identified as warranted parts
5 under the California Emissions Warranty as described or defined herein.

6 106. On behalf of the members of the Classes, Plaintiff seeks reimbursement or
7 restitution for the out-of-pocket expenses, including diagnostic fees for amounts wrongfully
8 paid by Plaintiff and members of the Classes relating to repairs that should have been covered
9 by the MBUSA California Emissions Warranty during the Class periods. Plaintiff's claim for
10 restitution is distinct from her claim for damages. The damages claim under the CLRA seeks,
11 inter alia, the diminished value of a California Emissions Warranty that does not cover all parts
12 that should properly be included in the California Emissions Warranty. Moreover, Plaintiff does
13 not seek the same sum in restitution as she seeks in damages, and the two remedies do not
14 compensate for the same harm. The restitutary remedy, which seeks out of pocket
15 reimbursement, will not compensate Plaintiff and members of the Classes for damages incurred
16 due to the Class Vehicles having a California Emissions Warranty that has less value because
17 the Warranty does not properly cover all parts that should properly be covered under the
18 California Emissions Warranty and will not compensate for the excess amounts and profits that
19 MBUSA pocketed due to its misconduct and in being able to avoid paying warranty claims that
20 should have been covered under the California Emissions Warranty.

21 107. The damages remedy under the CLRA also is not an adequate remedy at law for
22 the equitable claims alleged herein under the UCL. "Damages" under the CLRA are for actual
23 damages as described herein and distinct from a "restitution" remedy under the UCL which
24 compensates Plaintiff and members of the Classes for out-of-pocket losses. The same recovery
25 available for "restitution" under the CLRA is not available as "damages" under the CLRA
26 because the monetary recoveries address different losses. Moreover, Plaintiff and members of
27 the Classes do not seek the same amount in restitution as they seek in damages.
28

1 108. Further, the harm suffered by Plaintiff and members of the Classes and
2 perpetrated by MBUSA, is not adequately compensable with damages. The entire purpose of the
3 California Emissions Warranty is to protect the environment. The California Emissions
4 Warranty was enacted by the State of California to restrict harmful greenhouse gas from
5 gasoline and hybrid gasoline engines. The fundamental purpose of the emissions requirements is
6 to reduce emissions, limit fuel consumption and increase fuel efficiency, by forcing
7 manufacturers to repair and/or replace failed emissions-related vehicle components under
8 warranty, thereby decreasing greenhouse gas emissions, including carbon dioxide emissions.

9 169. Indeed, motor vehicle use is the single greatest source of U.S. air pollution and is the cause
10 of more air pollution than any other human activity. (Cars, Fuels, and Clean Air: A Review of
11 Title II of the Clean Air Act Amendments of 1990 (1991) 21 Envtl. L. 1947, 1949). Many of
12 these pollutants consist of hydrocarbons and nitrous oxides which react to form photochemical
13 oxidants in the atmosphere. The most notorious of these photochemical oxidants is ozone – the
14 primary component of urban smog. (California Air Resources Bd., Staff Report: Proposed
15 Regulations for Low-Emission Vehicles and Clean Fuels (Aug. 13, 1990) at p. 3). Cars also
16 produce nearly two-thirds of all carbon dioxide emissions. Carbon dioxide content in the
17 atmosphere is closely linked to global temperature because the temperature of the Earth is
18 primarily determined by the balance between its absorption of energy from the Sun, and the
19 reflection of a portion of this energy back into space. Carbon dioxide – a greenhouse gas – traps
20 the energy and heat which would have otherwise escaped back into space, and re-emits it,
21 causing the warming of our atmosphere. This process is known as the “greenhouse effect.”

22 109. Therefore, the State of California highly regulates emissions from gasoline and
23 hybrid gasoline engines, specifically greenhouse gas emissions. In September 1990, pursuant to
24 its broad authority to regulate and reduce environmentally harmful vehicle emissions under
25 Health and Safety Code §§ 43013(a) and 43205, CARB submitted, and the Legislature adopted,
26 California Code of Regulation §§ 2035, et seq., which requires all manufacturers to provide a
27 statutorily compliant emissions warranty to all vehicles distributed and registered in California.

1 110. In September 2004, CARB approved the “Pavley” Greenhouse Gas Regulations
2 to control greenhouse gas emissions from new LEV II vehicles beginning with the 2009 model
3 year. These Greenhouse Gas Regulations added four greenhouse gas air contaminants to the
4 vehicular criteria and toxic air contaminant emissions that California was already carbon
5 dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (air conditioner
6 refrigerants). The State and federal government have specifically focused on regulating
7 greenhouse gas emissions, including carbon dioxide emissions. If a gas vehicle has a defect
8 which increases fuel consumption, that defect increases carbon dioxide emissions.

9 111. Notwithstanding State and federal regulations designed to protect our air,
10 monitoring shows that over 90 percent of Californians breathe unhealthy levels of one or more
11 air pollutants during some part of the year. Despite CARB’s best efforts, in 2020, “there were
12 157 bad air days for ozone pollution—the invisible, lung-searing gas in smog—across the vast,
13 coast-to-mountains basin spanning Los Angeles, Orange, Riverside and San Bernardino
14 counties. That’s the most days above the federal health standard since 1997.” (Barboza, Tony
15 (Dec. 6, 2020) L.A. Began 2020 With A Clean-Air Streak but Ended with Its Worst Smog in
16 Decades, Los Angeles Times [<https://www.latimes.com/42alifornia/story/2020-12-06/2020-la-air-quality-southern-california-pollution-analysis>].) One of the reasons that our environment is
17 in such a state of crisis is that corporations are not following our very thoroughly formulated
18 rules.

20 112. Accordingly, damages are inadequate to compensate for the foregoing harms
21 caused by MBUSA’s violation, and continuing violation, of the California Emissions Warranty.
22 Money damages will not fix the harm caused by Defendant’s violation of emissions laws, which
23 requires equitable relief.

24 113. Further, MBUSA and car manufacturers should not be able to shirk their legal
25 responsibilities simply by paying damages. Simply paying off consumers undermines the entire
26 purpose of the California Emissions Warranty and will leave MBUSA in the position of being
27 able to continue to violate the law and increase harmful vehicle emissions by just paying
28 damages. Ironically, this

1 result will leave Plaintiff and members of the Classes in an even worse
2 position than by simply receiving monetary compensation alone.

3 114. Moreover, payment of damages does not ensure that the emissions parts will
4 actually be repaired. That result will only be ensured by forcing MBSUA to cover the repair
5 under the California Emissions Warranty as required.

6 115. Further, equitable relief is required because damages alone will not be sufficient
7 for Class members to identify all parts whose defects result in fault codes identified in the
8 OBD2 Summaries being triggered. Only MBUSA has done the analysis and knows the fault
9 code logic that would allow for identification of all required fault codes to CARB and all parts
10 that give rise to those fault codes so that those parts can be identified and properly covered
11 under the California Emissions Warranty. In effect, Plaintiff's request for equitable relief is the
12 only way to get MBUSA to do what it is required to do.

13 116. There are common questions of law and fact as to members of the Class and
14 Subclasses that predominate over questions affecting only individual members, including, but
15 not limited to:

- 16 (a) Whether Mercedes-Benz has failed and is failing to acknowledge that the engine
17 pistons installed in the Class Vehicles should be covered under the 7-year,
18 70,000-mile California Emissions Warranty, pursuant to California law;
- 19 (b) Whether Mercedes-Benz's failure to comply with the California Emissions
20 Warranty by failing to provide a 7-year, 70,000-mile California Emissions
21 Warranty for the engine pistons installed in the Class Vehicles damaged Class
22 members when they purchased or leased a Class Vehicle with a less valuable
23 warranty than they were entitled to;
- 24 (c) Whether Mercedes-Benz engaged in and is engaging in a systematic business
25 practice of failing to identify that the engine pistons installed in the Class
26 Vehicles should be covered under the 7-year,
27 70,000-mile California Emissions Warranty, pursuant to California law;

- (d) Whether Mercedes-Benz's conduct is an unlawful and unfair business practice in violation of California Business & Professions Code section 17200, *et seq.*;
 - (e) Whether Mercedes-Benz's conduct is a violation of California Business & Professions Code section 1750, *et seq.*;
 - (f) Whether Plaintiff and Class members are entitled to declaratory and injunctive relief regarding Mercedes-Benz's failure to identify that the engine pistons installed in the Class Vehicles should be covered under the 7-year, 70,000-mile California Emissions Warranty, pursuant to California law;
 - (g) The appropriate remedy for Mercedes-Benz's violations of California law.

117. There is a well-defined community of interest in the litigation and the Class members are readily ascertainable:

- (a) Numerosity: The Class members are so numerous that joinder of all Class members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendant's records.
 - (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class members as demonstrated herein.
 - (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any Class member. Plaintiff's attorneys, the proposed Class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be

1 necessarily expended for the prosecution of this action for the substantial benefit
 2 of each Class member.

3 (d) Superiority: The nature of this action makes the use of class action adjudication
 4 superior to other methods. A class action will achieve economies of time, effort,
 5 and expense as compared with separate lawsuits, and will avoid inconsistent
 6 outcomes because the same issues can be adjudicated in the same manner and at
 7 the same time for the entire class.

8 **TOLLING OF THE STATUTE OF LIMITATIONS**

9 118. Mercedes-Benz engaged in misleading and dishonest conduct relating to its
 10 failure to identify all of the parts, including the engine pistons, that should be covered pursuant
 11 to the California Code of Regulations regarding the 7-years 70,000-miles California Emissions
 12 Warranty. Despite acting diligently, Plaintiff and Class members lacked the resources and had
 13 no realistic ability to identify the specific parts that should have been covered. Plaintiff and
 14 Class members cannot be reasonably expected on their own to learn or discover what parts
 15 should be covered under the California Emissions Warranty. Therefore, the delayed discovery
 16 rule is applicable to the claims asserted by Plaintiff and Class members, and the statute of
 17 limitations for bringing the claims set forth herein should be tolled.

18 119. In addition, members of the Classes who contacted MBUSA and/or its authorized
 19 dealers were routinely told by MBUSA and its agents that the parts did not qualify for high-
 20 priced coverage under the 7-year and 70,000-mile California Emissions Warranty law.

21 120. Mercedes-Benz has actual and constructive knowledge that it is violating
 22 California law by failing to identify all of the parts that should be covered under the California
 23 Emissions Warranty. Mercedes-Benz has concealed from Plaintiff and Class members that
 24 Mercedes-Benz is violating California law as set forth herein. Any applicable statute of
 25 limitation is tolled by Mercedes-Benz's wrongful conduct set forth herein, and Mercedes-Benz
 26 is estopped from relying on any statute of limitation because of its conduct.

27 121. MBUSA was and remains under a continuing duty to disclose to Plaintiff and
 28 members of the Classes all of the parts and repairs for Class Vehicles that should be identified

1 as high-priced and covered under the 7-year and 70,000-mile California Emissions Warranty.
 2 As a result of MBUSA's wrongful conduct set forth herein, any and all applicable statutes of
 3 limitations otherwise applicable to the allegations herein have been tolled. MBUSA is further
 4 estopped from relying on any statute of limitation because of its concealment set forth herein.

5 **FIRST CAUSE OF ACTION**

6 **Violation of California Unfair Competition Law**

7 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

8 **By Plaintiff, the California Class, and the Reg. 177 Class Against All Defendants**

9 122. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

10 123. California Business and Professions Code section 17200, et seq. (the "UCL")
 11 prohibits "any unlawful, unfair or fraudulent business act or practice." Mercedes-Benz has
 12 committed acts of unfair competition proscribed by the UCL, including the acts and practices
 13 alleged herein.

14 124. The UCL imposes strict liability. Plaintiff need not prove that Mercedes-Benz
 15 intentionally or negligently engaged in unlawful or unfair business practices – only that such
 16 practices occurred.

17 125. Mercedes-Benz is a "person" as defined by Business & Professions Code §
 18 17201.

19 126. As a direct and proximate result of Mercedes-Benz's acts and practices in
 20 violation of the UCL, Plaintiff and members of the Classes have suffered injury in fact and lost
 21 money or property as set forth above and will continue to do so.

22 **Unlawful Prong**

23 127. A business practice is "unlawful" under the UCL if it is forbidden by law or
 24 regulations, including standard of professional conduct. The violation of any law or regulation
 25 may serve as the predicate for a violation of the "unlawful" prong of the UCL.

26 128. Mercedes-Benz failed to comply with the California Emissions Warranty
 27 requirements pursuant to the CCR by failing to provide 7-year and 70,000-mile warranty
 28 coverage for the engine pistons installed in the Class Vehicles where coverage should be

1 provided pursuant to the CCR. The California Emissions Warranty applies to all Class Vehicles.
2 13 CCR 2037(a). Pursuant thereto, manufacturers shall warrant that vehicles conform with the
3 California Air Resources Board regulations, and are free from defects which cause the failure of
4 a warranted part to perform as described in the application for certification, including defects
5 which would cause the vehicle's on-board diagnostic malfunction indicator to illuminate, for 3
6 years or 50,000 miles. 13 CCR 2037(b)(1)- (2). The vehicle manufacturer is Mercedes-Benz,
7 which is the manufacturer granted certification for the Class Vehicles. 13 CCR 2035(c)(5). The
8 parts at issue are all warranted parts. The warranty period shall be 7-years and 70,000-miles for
9 high-priced emissions parts. 13 CCR 2037(b)(3). High-priced emissions parts are those parts
10 which, when taking into consideration the cost to diagnose, replace and pay for the failed part,
11 exceed the cost limit defined in 13 CCR 2037(c)(3). The California Air Resources Board
12 published memos which calculated the cost limit for the Class period. Although the engine
13 pistons installed in the Class Vehicles exceeded the cost limit for the correlating years and
14 should have received California Emissions Warranty coverage, Mercedes-Benz failed to provide
15 7-year and 70,000-mile warranty coverage for said parts. The failure has resulted in damage to
16 Plaintiff and members of the Classes.

17 129. Mercedes-Benz did not designate the parts at issue as "emissions-related" and/or
18 high-priced warranted parts that should be covered by the 7-year and 70,000-mile California
19 High-Cost Emissions-Related Parts Warranty. Thereby, Mercedes-Benz also was able to avoid
20 identifying the engine pistons installed in the Class Vehicles as defined herein where coverage
21 should be provided pursuant to the CCR as being high-priced warranted parts in the warranty
22 books for the Class vehicles, which purport to identify all parts covered under the high-priced
23 California Emissions Warranty for 7 years and 70,000 miles. Thus, Mercedes-Benz's violation
24 of Section 2037(c)(1)(B) directly affected communications with consumers. By violating
25 Section 2037(c)(1)(B), Mercedes-Benz was able to avoid disclosing in the warranty books the
26 engine pistons that should have been included as high-priced warranted parts.

27 130. Mercedes-Benz's acts of unlawful competition as set forth above have caused
28 members of the Classes to suffer damage, present a continuing threat and will persist and

continue to do so unless and until this Court issues appropriate injunctive relief. Plaintiff also seeks attorneys' fees and costs pursuant to, inter alia, C.C.P. Section 1021.5.

Unfair Prong

131. Mercedes-Benz's conduct violates the unfair prong of the UCL. An act or practice is unfair if the consumer injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition and is not an injury the consumers themselves could reasonably have avoided. An act or practice also is unfair if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. An act or practice also is unfair if Plaintiff's claims are "tethered" to specific constitutional, statutory or regulatory provisions. Mercedes-Benz's conduct violates all of these definitions.

132. As alleged above, Mercedes-Benz engages and has engaged in a systematic business practice of intentionally failing to identify in the Class Vehicles' warranty books at the time of distribution, and in resources provided to its dealerships, numerous parts that Mercedes-Benz is obligated to identify as high-priced warranted parts and emission related parts by operation of law, including specifically the engine pistons installed in the Class Vehicles where coverage should be provided pursuant to the CCR. Mercedes-Benz does this in an effort to reduce the amount of money that Mercedes-Benz spends on warranty-related repairs knowing that it would be very difficult if not impossible for most consumers to discover this unlawful conduct. If Mercedes-Benz complied with California law and properly identified the engine piston as a high-priced warranted part, then Mercedes-Benz dealerships would properly provide warranty coverage for them. Further, Mercedes-Benz's conduct is unfair because it intentionally refuses to provide warranty coverage for the engine pistons installed in the Class Vehicles as defined herein for the sole purpose of wrongfully limiting its warranty claims, with no regard for the fact that the public is being forced to pay for repairs which should be covered under the 7-year and 70,000-mile California Emissions Warranty. Plaintiff and members of the Classes have suffered injury in fact and lost money or property as a result of Mercedes-Benz's unfair business acts and practices as set forth in detail.

1 133. Mercedes-Benz's failure to properly identify the engine pistons installed in the
2 Class Vehicles where coverage should be provided pursuant to the CCR, is a uniform,
3 systematic, and intentional business practice on the part of Mercedes-Benz to minimize the
4 amount of money that Mercedes-Benz has to pay out in warranty claims. This conduct violates
5 California law.

6 134. As a direct and proximate result of Mercedes-Benz's acts and practices in
7 violation of the UCL, Plaintiff and members of the Classes have paid out of pocket to repair or
8 replace engine pistons installed in the Class Vehicles where coverage should be provided
9 pursuant to the CCR and/or other high-priced warranted parts and emissions related parts as
10 defined herein that should have been covered by Mercedes-Benz under the 7-year and 70,000-
11 mile California Emissions Warranty. As a result, consumers were denied warranty coverage,
12 which is unfair.

13 135. Mercedes-Benz's conduct does not benefit consumers or competition. Plaintiff
14 and members of the Classes could not reasonably avoid the injury each of them suffered or will
15 suffer, which injury is substantial. Mercedes-Benz's conduct only benefits Mercedes-Benz, by
16 Mercedes-Benz wrongfully avoiding having to pay warranty claims which should be covered by
17 the California Emissions Warranty.

18 136. The gravity of the consequences of Mercedes-Benz's conduct as described above
19 outweighs the justification, motive or reason therefor, is immoral, unethical and unscrupulous.
20 Mercedes-Benz's conduct also offends established public policy that is tethered to legislatively
21 declared policies as set forth in the laws detailed above, including California laws and
22 regulations regarding the California Emissions Warranty, or is substantially injurious to the
23 public, for the reasons set forth above.

24 137. To the extent that any definition of "unfair" requires a balancing test or weighing
25 various factors, such an inquiry is fact intensive and requires a full factual record as to
26 Mercedes-Benz's justification and motives for its conduct, and as to the impact of Mercedes-
27 Benz's conduct on Plaintiff and members of the Classes.

28 138. Mercedes-Benz's acts of unfair competition as set forth above present a

1 continuing threat and will persist and continue to do so unless and until this Court issues
 2 appropriate injunctive relief. Plaintiff also seeks attorneys' fees and costs pursuant to, inter alia,
 3 C.C.P. § 1021.5.

4 **Deceptive Prong**

5 139. Plaintiff's claim under this prong is predicated on omissions, not
 6 misrepresentations. While the warranty booklets for Class Vehicles claim to identify all of the
 7 parts covered under the 7-year and 70,000-mile California Emissions Warranty, the warranty
 8 books omit the engine pistons installed in the Class Vehicles that should have been listed as
 9 covered by the 7-years 70,000-mile California Emissions Warranty pursuant to the CCR.

10 140. Mercedes-Benz engages in a uniform and systematic business practice of
 11 intentionally failing to identify in the Mercedes-Benz warranty books, and in resources provided
 12 to its dealerships, the engine pistons as high-priced emissions related warranted parts where
 13 coverage should be provided pursuant to the CCR installed in the Class Vehicles as high-priced
 14 warranted parts. Mercedes-Benz does this in an effort to intentionally conceal the identity of the
 15 parts which should be covered under the 7-year and 70,000-mile California Emissions Warranty
 16 for high-priced emissions parts. This has intentionally misled consumers with regard to what
 17 parts are covered under the 7-year and 70,000-mile California Emissions Warranty for high-
 18 priced parts and reduced the amount of money that Mercedes-Benz spends on warranty-related
 19 repairs. As warranted parts necessary for the operation of the vehicles, the parts that Mercedes-
 20 Benz failed to properly identify as high-priced relate to the central functionality of the vehicles
 21 and are critical to the vehicles' operation. If Mercedes-Benz complied with California law, and
 22 properly identified the engine pistons as high-priced warranted parts which should be identified
 23 as such, then Mercedes-Benz dealerships would properly provide warranty coverage for said
 24 high-priced warranted parts.

25 141. Mercedes-Benz's failure to properly identify the engine pistons installed in the
 26 Class Vehicles as high-priced warranted parts as defined herein is a systematic and intentional
 27 business practice on the part of Mercedes-Benz to minimize the amount of money that
 28 Mercedes-Benz has to pay out in warranty claims.

1 142. Said conduct is likely to deceive an ordinary consumer as Mercedes-Benz
2 concealed this information from consumers and from Mercedes-Benz's dealerships, in an effort
3 by Mercedes-Benz to minimize the amount of money that Mercedes-Benz has to pay out in
4 warranty claims. One of the ways Mercedes-Benz misleads consumers relates to the information
5 that Mercedes-Benz provides to consumers in the Mercedes-Benz warranty books. Mercedes-
6 Benz intentionally omits information from the warranty books by intentionally failing to classify
7 the engine pistons as high-priced warranted parts that should be covered under the 7-year and
8 70,000-mile California Emissions Warranty.

9 143. In evaluating the repair costs to be charged, Plaintiff and members of the Classes
10 have justifiably relied on the information in the warranty booklets about parts that should be
11 covered under the high-priced emissions warranty and have been deceived and suffered damage
12 as a result of Mercedes-Benz's intentional and wrongful conduct.

13 144. Mercedes-Benz is fully aware of its obligations pursuant to the CCR and purports
14 to comply with them. However, in derogation of its legal obligations, Mercedes-Benz willfully
15 and intentionally conceals from consumers, and from the Mercedes-Benz dealerships, the engine
16 pistons installed in the Class Vehicles where coverage should be provided pursuant to the CCR
17 as parts that should be covered as high-priced warranted parts and emissions related parts as
18 defined herein pursuant to the California Emissions Warranty, in order to reduce the amount of
19 money that Mercedes-Benz has to pay in warranty claims.

20 145. Mercedes-Benz is and was under a duty to disclose to consumers and to its
21 dealerships that the engine pistons installed in the Class Vehicles are required to be covered
22 under the California Emissions Warranty pursuant to the CCR.

23 146. Mercedes-Benz is and was further under a duty to disclose to consumers and to
24 its dealerships all of the parts as defined herein which it is required to cover under the 7-year
25 and 70,000-mile California Emissions Warranty because: (1) Mercedes-Benz is and was in a
26 superior position to know the true state of facts about the duration of the California Emissions
27 Warranty and which parts should be covered as high-priced warranted parts; (2) Mercedes-Benz
28 has made partial disclosures about the extent of the California Emissions Warranty; (3)

Mercedes-Benz has actively concealed and failed to identify all of the parts that are covered under the California Emissions Warranty; and, (4) Members of the Classes, including Plaintiff, have suffered actual loss due to Mercedes-Benz concealment and false representations.

147. The facts concealed and not disclosed by Mercedes-Benz to Plaintiff and members of the Classes are material. Had Plaintiff and members of the Classes known the true extent of the California Emissions Warranty and had Mercedes-Benz been truthful to its dealerships and members of the Classes with regard to identifying all of the parts and repairs as defined herein that are covered under the California Emissions Warranty, Plaintiff and members of the Classes would have been able to avoid spending money in order to repair Mercedes-Benz vehicles. As a result, Plaintiff and members of the Classes have suffered damage.

148. In order to minimize the amount of money that Mercedes-Benz spends on warranty related repairs, Mercedes-Benz continues to conceal that the engine pistons installed in the Class Vehicles are warranted parts that should be covered under the California Emissions Warranty.

149. Furthermore, Mercedes-Benz has refused to, and continues to refuse to provide 7-year and 70,000-mile California Emissions Warranty coverage relating to all repairs for the engine pistons installed in the Class Vehicles where coverage should be provided pursuant to the CCR. This refusal is intentional, willful, unfair, and unlawful.

SECOND CLAIM FOR RELIEF

Violation of California Consumers Legal Remedies Act

(Cal. Civil Code § 1750, *et seq.*)

150. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

151. Mercedes-Benz has violated Section 1770 of the California Consumers Legal Remedies Act, Cal. Civ. Code Section 1750, *et seq.* (the “CLRA”). The violation results from Mercedes-Benz’s failure to keep its promise to the State of California, and members of the Classes, including Plaintiff, that it would honor the terms of the Mercedes-Benz warranty, and by doing so, that it would honor the terms of the CCR. Furthermore, the Mercedes-Benz warranty book provided by Mercedes-Benz to consumers, including Plaintiff, specifically

1 references the California Emissions Warranty, and both inferentially and specifically represents
 2 that it will honor the terms of the CCR, however Mercedes-Benz has refused, and continues to
 3 refuse to honor the terms of the CCR, as stated herein.

4 152. Plaintiff is a consumer who was wrongfully required to pay for repairs which
 5 should have been paid for by Mercedes-Benz pursuant to the CCR. The Subject Vehicle was
 6 presented by Plaintiff for repairs at a Mercedes-Benz authorized repair facility, in compliance
 7 with the terms and conditions of the Mercedes-Benz warranty. The Vehicle required repairs
 8 which should have been covered pursuant to the CCR, based upon the Vehicle's mileage and
 9 age. Mercedes-Benz wrongfully failed and refused to pay for the warranty repairs due to the
 10 unlawful pattern and practice set forth herein. Thus, Plaintiff suffered damage.

11 153. Mercedes-Benz knows that it is violating the terms of the CCR, however
 12 Mercedes-Benz intentionally violates the CCR in order to save money. Plaintiff and members of
 13 the Classes are generally unaware of the terms and scope of the CCR, thus Mercedes-Benz is
 14 able to get away with said wrongful conduct. As a result, Plaintiff and members of the Classes
 15 have suffered damage. Mercedes-Benz engages in a systemic pattern of denying warranty
 16 claims under the CCR relating to high-priced warranted parts.

17 154. Plaintiff and members of the Classes have presented Class Vehicles to Mercedes-
 18 Benz authorized repair facilities for repairs that should have been covered under the CCR, but
 19 coverage has been wrongfully denied to them. As a result, Plaintiff and members of the Classes
 20 have thus suffered damage. Plaintiff brings this claim on behalf of himself and the Classes.

21 155. Mercedes-Benz's conduct in warranting, advertising, leasing, selling and
 22 distributing Class Vehicles in the State of California, while at the same time knowingly and
 23 wrongfully failing to honor the terms of the CCR, constitutes the following violations of Section
 24 1770:

- 25 (a) Mercedes-Benz represents and has represented that Class Vehicles sold and
 26 leased in the State of California have characteristics or benefits which they did
 27 not have (in violation of Section 1770(a)(5));

- (b) Mercedes-Benz has falsely represented that Class Vehicles sold and leased in the State of California were of a particular standard, quality, or grade when they were of another (in violation of Section 1770(a)(7)); and,
 - (c) Mercedes-Benz advertised Class Vehicles that have been sold and leased in the State of California with the intent not to sell them as advertised (in violation of Section 1770(a)(9)).

7 156. Civil Code section 1780(a) provides that any consumer who suffers damage as a
8 result of a violation of the CLRA may bring an action to recover: 1) actual damages, but in no
9 case shall the total award of damages in a class action be less than \$1,000; 2) an order enjoining
10 the methods, acts, or practices; 3) restitution of property; 4) punitive damages; and 5) any other
11 relief that the court deems proper.

12 157. Civil Code section 1781 provides that Plaintiff may pursue this case as a class
13 action.

158. Plaintiff requests injunctive relief pursuant to Civil Code 1782(d).

159. Plaintiff is entitled to attorney fees pursuant to Civil Code section 1780(e).

16 160. On March 7, 2022, Mercedes-Benz was served notice via certified mail return
17 receipt of its violations of the Consumer Legal Remedies Act, as set forth herein. A demand was
18 made to Mercedes-Benz that it take corrective action. Mercedes-Benz failed to take the
19 corrective action demanded in the March 7, 2022, notice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment against Mercedes-Benz as follows:

(a) An order certifying the proposed Classes, designating Plaintiff as named representative of the Classes, and designating the Plaintiff's Counsel as Class Counsel;

25 (b) A declaration that MBUSA is financially responsible for notifying all members of the
26 Classes about the wrongful conduct set forth herein; that MBUSA's conduct as alleged herein
27 violates the California Emissions Warranty including, without limitation, that MBUSA has
28 used, and continues to use, the wrong or incorrect standards for identifying "emission-related"

1 parts and “high-priced warranty parts” under the California Emissions Warranty; that MBUSA
2 failed and is failing to properly identify and warrant under the California Emissions Warranty
3 all of the parts, components or systems as defined and limited that should have been properly
4 covered for emissions-related defects as identified, inter alia, per the fault codes on the Class
5 Vehicles OBD2 Summaries described herein, per Appendix B of the CARB regulations, and/or
6 as high-priced warranty parts; and/or that Plaintiff and the members of the Classes are entitled to
7 warranty coverage under California Emissions Warranty for all Mercedes vehicle parts not
8 properly identified as warranted parts under the California Emissions Warranty described or
9 defined herein.;

10 (c) An order requiring Mercedes-Benz to

11 (1) review its warranty books for all Class Vehicles and properly identify and
12 warrant all “emissions-related parts” and

13 (2) for all such parts, and for all parts that Mercedes-Benz already identified in its
14 warranty books or that Mercedes-Benz previously identified and submitted to
15 CARB as “emissions parts” or “emissions-related parts,” recalculate whether
16 those parts, in fact, should properly be characterized as “high priced parts” when
17 the correct, rate is used;

18 (3) on a going forward basis, use the proper standard for determining whether a part
19 is “emissions-related” under the California Emissions Warranty;

20 (4) otherwise accurately and comprehensively apply the CCR in order to properly
21 identify all parts as defined and limited herein that should be covered under the
22 California Emissions Warranty; and (5) enjoin Mercedes-Benz from further
23 deceptive distribution, sales, and lease practices, and to reimburse both Plaintiff
24 and members of the Classes for the money wrongfully paid by Plaintiff and
25 members of the Classes relating to repairs which should have been covered by
26 Mercedes-Benz under the California Emissions Warranty;

27 (d) An award to Plaintiff and members of the Classes of any repair costs they are owed,
28 reimbursement for all out-of-pocket expenses, including diagnostic costs, that Class Members

paid for repairs that should properly have been covered by Mercedes-Benz under the California Emissions Warranty and other amounts to which they may be legally entitled;

(e) An award to Plaintiff and members of the Classes of damages in an amount to be proven at trial;

(f) An award of attorneys' fees and costs as allowed by law and/or pursuant to California Code of Civil Procedure § 1021.5;

(g) An award of pre-judgment and post-judgment interest;

(h) Leave to amend the Complaint to conform to the evidence produced at trial; and,

(i) Other relief as may be appropriate under the circumstances.

Dated: October 9, 2022

Respectfully submitted,

**POMERANTZ LLP
THE LAW OFFICE OF ROBERT STARR
FRONTIER LAW CENTER**

By: _____ /s/ Ari Y. Basser
Jordan L. Lurie
Ari Y. Basser
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